



**DRAFT REGULATIONS ON CODE OF CONDUCT FOR PREMIUM RATED SERVICES (GG 39536) DATED 17 DECEMBER 2015.**

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**1. SECTION 1 - INTRODUCTION**

Mobile Telephone Networks (Pty) Ltd (“MTN”) would like to thank the Independent Communications Authority of South Africa (“the Authority”) for the opportunity and invitation to comment on the draft regulations on the Code of Conduct for Premium Rated Services (GG: 39536) (“Draft Regulations”).

The purpose of the Draft Regulations are to:

- Align with section 69(2) of the Electronic Communications Act of 2005 (“the ECA”);
- to cater for the provision of Premium Rated Services offered by Electronic Communication Service and Electronic Communication Network Service licensees and their third parties service providers;
- to protect the interest of the public in general and in particular consumers of premium rated services provided within the Republic;
- to create End-user confidence in Premium Rated Services for the benefit the industry as well as support new and innovative premium rated services emerging from the industry; and
- to ensure the protection of the public and consumer interests.

MTN generally supports the stated purpose of the Draft Regulations and commends the Authority for taking steps to protect the interests of the general public (consumers in particular)

and to create consumer confidence in Premium Rated Services (“PRS”). Such measures will have a positive effect on the development of PRS industry.

MTN's submission is structured as follows:

- Section 1: Introduction;
- Section 2: General commentary; and
- Section 3: Specific comments.

## **2. SECTION 2 - GENERAL COMMENTS**

MTN is a provider of Premium rated services and has voluntarily implemented most of the consumer protection measures proposed in the Draft Code for the benefits of its customers. Many of the proposed requirements in the Draft Code are currently in place and regulated under the Wireless Access Service Providers Association (“WASPA”) Code of Conduct.

WASPA was established in 2004 as a voluntary self-regulatory body in order to represent and regulate Wireless Access Service Providers (“WASPs”).

WASPA currently has over 250 members with a recognised Code of Conduct which has been made compulsory by Telkom Mobile, Cell C, MTN and Vodacom for all WASPs who are contracted to these entities. All content providers who provide PRS are required to be members of WASPA and comply with the Code of Conduct<sup>1</sup>.

Therefore MTN agrees with regulations 5(1) of the Draft Regulations which states that Licensee must encourage third parties providing Premium rated service through the licensee's network to comply with the minimum standards set in these regulations. This is already happening in the industry and the proposed Draft Regulations takes further step in solidifying this practice. .

However, the Authority should note that most of the Premium Rates Service Providers are not licensees and it will be difficult for the Authority to enforce these Draft Regulations on them. MTN will endeavour to ensure that all PRS service providers who are contracted to MTN are required to comply with the proposed Draft Code through contractual undertakings. MTN further urges the Authority to encourage compliance through WASPA and WASPA members to ensure that the WASPA code of conduct is fully aligned to the final version of the Regulations.

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<sup>1</sup> <http://waspa.org.za/about/>

### **3. SECTION 3 - SPECIFIC COMMENTS**

#### **3.1. DEFINITIONS**

The definition of a licensee is defined as the following:

*“...means a person to whom a licence has been granted under section 5 of the Act;”*

This should read Chapter 3 and not Chapter 5 as Chapter 5 deals with Radio Frequency Spectrum.

#### **3.2. NUMBERING STRUCTURE OF PREMIUM RATED SERVICES**

Regulation 3 (1) and (2) states the following:

*“(1) Premium Rated Services are to be provided within the designated number ranges as specified in the relevant Numbering Plan Regulations.*

*(2) In order to promote transparency, Premium Rated Services that consist of adult contents will be provided in the 092 National Destination Code (NDC).”*

MTN suggests that the wording reflect the relevant demarcated ranges and that all new services must reside in the 090 for PRS and 092 Adult PRS. We note however the existing numbering regulations 35737 make no reference to 092 or Adult services and it is apparent that the Authority is referencing the current draft regulations 38908 where:

- 090 Released Premium rate services
- 091 Released Premium rate services
- 092 Released Premium rate services and Adult content services

#### **3.3. MIGRATION OF PREMIUM RATED SERVICES**

MTN submits that the proposed bi-monthly (twice per month) period for reporting progress on the migration of premium rated services is very short. It is submitted that this short reporting period may divert resources from the migration process and significantly slow down the progress. MTN submits that the Authority consider reporting on a quarterly.

Regulation 4 (4) of the Draft Regulations states as follows:

*“A dual provision of the premium rated service on both the previously assigned number and the new number must occur for a period not lasting more than six (6) months from the date these Regulations come into force.”*

MTN submits that the 6 month period allocated to complete the migration process is not sufficient because it will be very difficult to achieve the migration in 6 months due to the current contractual arrangements with premium rated service providers. MTN recommends that a minimum period of 12 months be given to effect the migration of services.

### **3.4. PREMIUM RATED SERVICES OFFERED INDIRECTLY LICENSEES**

Regulation 5 (1) states:

*“A licensee must encourage third parties providing premium rated services through the use of the licensees’ network to comply with the minimum standards set out in these regulations.”*

As mentioned in Section 1 above, MTN supports this requirement and will endeavour to ensure that third parties comply with the minimum standards set out in the regulations. However MTN is concerned that there are no sufficient provisions in these Regulations dealing with responsibility of such 3<sup>rd</sup> party providers that fail, neglect or refuse to comply with the regulations despite having made contractual undertakings. As the bare minimum, MTN proposes that licensees should not be made to take responsibility of such actions.

### **3.5. GENERAL PROVISIONS OF PREMIUM RATED SERVICES**

Regulation 6 (3) states that:

*“...end-users must be given an option to opt-in for the service and for receipt of the content”*

MTN submits that this provision be clarified since “Opt-in” can be interpreted in many ways. For example: an end-user accessing an advert for a PRS could be interpreted to be an opt-in, or may access a link by mistake which could be interpreted to be an act of opting in. MTN proposes that ICASA specify whether or not a double opt-in is required particularly for subscription PRS. Mobile originating PRS and PRS voice services are already considered an opt-in as the end-user has to explicitly access the service code in order to subscribe.

Regulation 6 (4) sets out the following:

*“End-users of premium rated services prior to these Regulations coming into effect, which were offered by means of SMS/MMS communication must be given an option to opt-out of the service by which they have terminated communication and receipt of the said service.”*

It is submitted that the Authority clarifies if Licensees like MTN would have to provide their entire current base of end-users of PRS with the opportunity to opt-out of current PRS? If so, the Authority must be mindful of the negative impact this would have on revenue for all parties concerned, bearing in mind third parties providing premium rated services through the MTN network have funded the cost of acquiring the end-users, and have done so with the end-users’ authorisation/consent.

Whilst MTN understands and appreciates the intention of the Authority in this regard, MTN submits that it currently employs sufficient measures to protect end users from unauthorised billing of PRS as it makes provision for end-users of PRS on the MTN Network to opt-out of any PRS at any time by accessing the MTN self-service menu

\*141\*5# and selecting number 4 on the menu. MTN would like to urge the Authority to adopt a balanced approach taking into account the interests of consumers and premium rated service providers.

### **3.6. INFORMATION ON PREMIUM RATED SERVICES**

Regulation 8 (1) sets out the following:

*“A Licensee must provide the Authority, on request, with a list of all number blocks or numbers assigned for use for premium rated services together with a detailed description of the premium rated services associated with that number or number block.”*

MTN is able to provide the Authority with a list of number blocks or numbers assigned for use for PRS, however it will be challenging for MTN to keep an accurate record of services associated with that number or number block. MTN does not have control over which services are applied to service codes as that is done on an application level by the third party provider. The third party is able to change/add/remove services from an access code, without any required changes on the network, hence control of services is with the third party provider and not MTN as a Licensee. The Authority should note that if MTN is required to provide number blocks or numbers assigned for use for PRS, it would not be possible for MTN to guarantee the accuracy of the information provided.

Regulation 8 (2) sets out the following:

*“A Licensee must make the information in terms of sub-regulation (1) readily accessible to end-users.”*

MTN proposes that the information referred to in 8(1) must be made readily accessible to the end-user only in so far as that information is relevant to the end-user enquiring (i.e., any PRS that the enquiring end-user is subscribed to).

### **3.7. UNSOLICITED PREMIUM RATED SERVICES**

Regulation 9 states that no premium rated service provider must engage in the practise of providing free unsolicited services to any person which requires such person to take action by unsubscribing from the service failing which they will be automatically subscribed. MTN submits that where the premium rated service provider is also an ECNS/ECS license it is possible for the Authority to enforce the requirement, however it should be noted that not all premium rated service providers are licenced in accordance with chapter 3 of the ECA and therefore it may be difficult for the Authority to enforce this obligation to premium rates services providers who do not have ECNS/ECS Licences. .

### **3.8. SUBSCRIPTION SERVICES**

Regulation 10 requires promotional material to clearly state that the service is a subscription service. MTN supports this provision, however it should be noted that not all premium rated service providers are licenced in accordance with chapter 3 of the ECA.

### **3.9. END USER INFORMATION (EUI) OBTAINED BY PREMIUM RATED SERVICE PROVIDERS**

MTN supports regulation 15 of the Draft Regulations. However the Authority should provide clarity as to how it would deal with content providers who may be able to avoid the jurisdiction of the Protection of Personal Information Act by housing their data in other legal jurisdictions.

### **3.10. BILLING OF PREMIUM RATED SERVICES**

MTN refers to regulation 16 (5) and (6) of the Draft Regulations. MTN is of the opinion that if an end-user has knowingly and willingly opted in to a service that will cost more than R200 per month then this should be sufficient authorisation from an end-user to be billed accordingly for the services consumed. The end-user should always utilize the available means made to him to opt-out of the service at any time and service providers should not be penalized for failure by the end user to utilize the available means.

### **3.11. TRANSITIONAL ARRANGMENTS**

MTN submits that 1 month is too short and not sufficient time to align contracts with the Draft Regulations once they have been finalised. MTN proposes that the Authority allow a period of 6 months from the date of the regulations coming into effect.

**-END-**